STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	
	)	ICC Docket No. 14-0312
Annual Formula Rate Update and Revenue	)	
Requirement Reconciliation Authorized by	)	
Section 16-108.5 of the Public Utilities Act	)	

THE PEOPLE OF THE STATE OF ILLINOIS'
APPLICATION FOR REHEARING

The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("the People" or "AG"), pursuant to Part 200.880 of the Commission's Rules of Practice, 83 Ill.Admin.Code Part 200.880, hereby file their Application for Rehearing in the above-captioned proceeding concerning the annual formula rate update under the Energy Infrastructure Modernization Act ("EIMA") applicable to Commonwealth Edison Company ("ComEd" or the "Company").

I. Introduction

On December 10, 2014, the Commission entered its final Order ("Order") in this proceeding. In that Order, the Commission rejected (i) the recommendation made by the People, and by the Citizens Utility Board ("CUB") acting with the City of Chicago and the Illinois Industrial Energy Consumers ("IIEC") (the latter three parties together, "CCI"), that the reconciliation balance associated with ComEd's 2013 revenue requirement be reduced by associated deferred income tax for purposes of calculating interest thereon, pursuant to Section 16-108.5(d) of the Act, plus (ii) the recommendation made by the People and by the Commission Staff to disallow all of ComEd's 2013 Annual Incentive Program ("AIP") expense from recovery.

First, the People request that the Commission reconsider its rejection of the AG/CCI-proposed adjustment which would apply interest to the "net-of-tax" reconciliation balance. Reconsideration is particularly relevant in light of the Fourth District Appellate Court ruling in *Ameren Ill. Co. v. Ill. Comm. Comm'n*, 2013 IL App (4th) 121008, dated December 11, 2013 and modified upon denial of rehearing January 28, 2014, which the People cited at pages 50-51 of their Initial Brief[1] and pages 21-22 of their Reply Brief[2]. That opinion presents controlling law that specifically authorizes the Commission to apply relevant ratemaking principles and treat deferred income taxes as non-shareholder funds that should not receive interest as shareholder funds. Consistent with the Court's holding, established regulatory principles, and the Public Utilities Act ("PUA" or the "Act"), the Commission should deduct deferred taxes from the reconciliation balance for purposes of calculating interest on that balance.

Second, the Commission's December 10, 2014 Order allows ComEd to recover its 2013 AIP incentive compensation expense up to the level of a 102.9% payout percentage, disallowing only the difference between expense at a 124.35% payout percentage (the actual amount of expense incurred by ComEd in 2013) and 102.9%. Yet the Order also finds that 2013 AIP expense was "impacted by" the earnings per share ("EPS") of Exelon Corporation ("Exelon"), which is ComEd's corporate affiliate. Section 16-108.5(c)(4)(A) of the Act is very clear that incentive compensation expense based on an affiliate's EPS may not be recovered; it admits no qualifications or exceptions. The Order cites no statutory provision, rule, appellate authority, or Commission precedent for making an exception to the plain language of § 16-108.5(c)(4)(A).

[1] References herein to the People's "Initial Brief" shall refer to their Second Corrected Initial Brief, filed September 16, 2014.

[2] References herein to the People's "Reply Brief" shall refer to their Corrected Reply Brief, filed September 18, 2014.

Additionally, the Order states that its adopted solution of a 102.9% recovery level would "eliminate" or "separate" EPS-based expense from AIP expense not based on Exelon EPS, but the evidentiary record clearly shows that the Commission would need to allow recovery at the 140.39% payout percentage earned by employees (prior to application of the EPS limiter and not actually paid out) – a *higher*, not lower, amount than the 124.35% expense actually incurred – in order to "eliminate" the effect of the EPS. Thus, the People request that the Commission reconsider its rejection of the AG/Staff proposal to disallow all 2013 AIP expense from recovery.

These errors subject the Order to judicial review and reversal as not supported by substantial evidence, as beyond the Commission's jurisdiction, and as in violation of Illinois law and regulatory principles (220 ILCS 5/10-201(e)(iv)(A), (B), and (C)), as discussed further below.

II. The Commission Should Deduct Deferred Income Tax From the Annual Reconciliation Balance Before Calculating Interest Thereon.

A. Recent Commission Treatment of the AG/CCI Proposed Reconciliation Interest Adjustment Has Found It Complies with GAAP and Standard Ratemaking

In Docket No. 13-0553, an investigation running contemporaneously with Docket No. 13-0318, last year's formula rate update proceeding, AG and CCI both proposed that, in light of EIMA's emphasis on allowing utilities to recover their "actual costs," and in light of the statute's silence[3] on how interest on the annual reconciliation balance should be calculated, the Commission recognize the tangible monetary benefit of accumulated deferred income tax

[3] "Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year." 220 ILCS 5/16-108.5(d)(1).

("ADIT") and calculate interest only on the "net-of-tax" reconciliation balance under Section 16-108.5(d)(1) of EIMA. In its Order in that proceeding, the Commission found:

> merit in the AG and CCI's proposal that accumulated deferred income tax, or ADIT should be netted against the reconciliation balance before calculating the interest amount. This concept is consistent with Generally Accepted Accounting Principles, is consistent with standard regulatory practice that matches ADIT elements to the associated assets included in rate base and properly recognizes the cash benefit to the utility that would otherwise have been paid out for income taxes on the amount.[4]

However, the Commission declined to adopt the AG/CCI proposal for the stated reason that the AG/CCI proposed adjustment to the reconciliation interest calculation is not specifically mentioned in EIMA, and "it is difficult for the Commission to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express."[5] The Commission also invited "further arguments" on the issue from the parties in future cases.[6] The People applied for rehearing as to that issue on December 26, 2013 and then, following denial of rehearing, appealed the Commission's decision to the Appellate Court, First District on January 30, 2014; that appellate proceeding is docketed with the Appellate Court as numbers 1-14-0114, 1-14-0275, and 1-14-0403 (cons.) and is fully briefed and pending oral argument as of today.

The People and CCI proposed the same adjustment to the calculation of interest on the reconciliation balance of 2013's revenue requirement in *this* year's instant formula rate update

[4] Order, Docket No. 13-0553, November 26, 2013, at 43.

[5] *Id*.

[6] *Id.*

proceeding. The People and CCI each presented expert witnesses in support of their proposal[7], and ComEd presented witnesses against the proposal.

In its Order in this instant proceeding, the Commission found at page 77 that "the Commission has not been provided sufficient reason to overturn its previous decisions" on the reconciliation interest issue.

B. The Fourth District Opinion Authorizes Deduction of ADIT in Ratemaking

The People request that the Commission reconsider its December 10, 2014 decision on this issue in light of the Fourth District Appellate Court ruling in *Ameren Ill. Co. v. Ill. Comm. Comm'n*, 2013 IL App (4th) 121008, previously cited above (the "Fourth District Opinion" or "*Ameren*"). That opinion specifically authorizes the Commission to deduct deferred income tax consistent with established regulatory principles.

The Court emphasized that a failure to deduct ADIT from the plant balances in Ameren Illinois Company's ("Ameren") annual formula rate proceedings would provide Ameren a significant windfall at the expense of ratepayers. The Court held that deducting deferred income tax from projected plant additions is correct as a matter of prudent accounting: "[o]mitting [deferred income tax] from the rate base calculation would allow Ameren what amounts to an interest-free loan at the ratepayers' expense that would artificially increase Ameren's rates until the next reconciliation process, a result which is neither just nor reasonable for ratepayers."[8] Thus, the Fourth District Opinion held that "[a]s it was consistent with the common practice of the Commission to include [deferred income tax] in the ratemaking process, the Commission did

[7] AG Ex. 1.0C2 at 4-18; AG Ex. 2.0 at 6-9; CCI Ex. 1.0 at 2-7.

[8] Fourth District Opinion at ¶ 39.

not err by including the [deferred income tax] adjustment for projected plan[t] additions in its ratemaking calculation."[9]

C. Implication of the Fourth District Opinion For This Proceeding

Addressing a slightly different aspect of the annual electric formula ratemaking process, Section 16-108.5(d)(1) of the PUA states that "[a]ny over-collection or under-collection indicated by [the annual] reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year." Section 16-108.5(d)(1) says nothing about deducting deferred income tax from the reconciliation over-collection or under-collection for purposes of calculating interest thereon. It is important to note, however, that despite the lack of express statutory authorization in Sections IX or XVI of the PUA to deduct deferred income tax from projected plant additions or plant in general for purposes of calculating rate base, the Appellate Court in the *Ameren* case held that the Commission did not err in making such deduction.

Although the Commission specifically found "merit" in the AG/CCI proposal in its November 26, 2013 order in Docket No. 13-0553 and that the proposal conformed to GAAP and standard regulatory practice, the Commission rejected the proposed ADIT adjustment in that order based on the Act's failure to specifically require the deduction, noting that "it is difficult for the Commission to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express. *Davis v. Toshiba Machine Co.*, 186 Ill.2d 181, 184-185 (1999)."[10]

[9] Fourth District Opinion at ¶ 40.

[10] Order, Docket No. 13-0553, November 26, 2013, at 43.

However, as the Illinois Supreme Court has stated:

> it is not sufficient to read a portion of the statute in isolation. We must, instead, read the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it. *Gill v. Miller,* 94 Ill.2d 52, 56, 67 Ill.Dec. 850, 445 N.E.2d 330 (1983). Where the language of the statute is clear and unambiguous, we must apply it as written, without resort to other tools of statutory construction. *Raintree Homes, Inc. v. Village of Long Grove,* 209 Ill.2d 248, 255, 282 Ill.Dec. 815, 807 N.E.2d 439 (2004). Generally, the language of a statute is considered ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. *In re B.C.,* 176 Ill.2d 536, 543, 223 Ill.Dec. 919, 680 N.E.2d 1355 (1997).

Mid Electrical Contractors, Inc. v. Abrams, 228 Ill.2d 281, 287-288 (2008). The overall purpose of EIMA is to reconcile the utility's revenue requirement every year so that the utility recovers revenues sufficient to cover its *actual costs* during each annual formula rate cycle. Allowing interest on cash that is *not* foregone does not meet the statutory goal of matching the reconciliation to actual costs and applying interest to the actual cash under- or over-collection.

The Commission has made clear, in both its Docket No. 13-0553 order and again in its Order in the instant proceeding, that it finds "merit," as a matter of prudent regulatory accounting, in the People's proposal to deduct deferred income tax from the reconciliation balance for purposes of calculating interest thereon. The guidance provided by the Fourth District Opinion provides the Commission with assurance that it may implement this adjustment, despite the lack of express statutory authorization to do so in Section 16-108.5(d)(1) of the PUA.

Failure to adopt the AG/CCI proposal to deduct ADIT from the 2013 reconciliation under-collection for purposes of calculating interest thereon would be contrary to law, not supported by substantial evidence, and arbitrary and capricious, and it would subject the Order to judicial review and reversal under Section 10-201(e)(iv)(A-D) of the Act. The Commission's

interpretations of statutory authority are not subject to deference by the Court, as questions of law are reviewed *de novo. A. Finkl & Sons Co. v. Illinois Commerce Comm'n*, 250 Ill.App.3d 317, 323 (1st Dist. 1993). ("[T]he Commission's interpretation of questions of law is not binding on a reviewing court.")

In support of this request for rehearing, the People incorporate by reference the arguments they presented at pages 44-53 of their Initial Brief; pages 21-30 of their Reply Brief; and pages 11-14 of their Brief on Exceptions. Accordingly, the People request that the Commission grant rehearing on this matter.

III. Incentive Compensation Based On An Affiliate's Earnings Per Share Must Be Disallowed In Its Entirety.

Both the People[11] and the Commission Staff[12] introduced expert witnesses in this proceeding who proposed[13] that ComEd's 2013 Annual Incentive Program ("AIP") expense be entirely disallowed from recovery because the AIP's Shareholder Protection Feature ("SPF"). This feature requires ComEd to decrease incentive compensation payments in case the earnings per share ("EPS") of Exelon Corporation ("Exelon"), ComEd's corporate parent, do not meet certain targets. The SPF reduced the amount of ComEd's actual 2013 AIP expense based on low realizations of Exelon EPS. *See* AG Ex. 1.7 at 7 (Exelon AIP guide).

Section 16-108.5(c)(4)(A) of EIMA is very clear that:

[11] *See* AG Ex. 1.0C2 at 19-28; AG Ex. 3.0C at 21-32.

[12] Staff Ex. 8.0 at 15-34.

[13] Staff made a primary proposal to disallow all 2013 AIP expense ("Staff recommends that the Commission adopt the AG adjustment to disallow 100% of ComEd [AIP] incentive compensation," Staff Initial Brief at 24) but also made an "alternative" proposal for partial disallowance, discussed below.

> [i]ncentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the performance-based formula rate.

However, following briefing, the Commission's Order adopted[14] an "alternative" proposal also offered[15] in rebuttal testimony by Staff witness Bridal, who proposed that, if the Commission were not inclined to disallow all of ComEd's 2013 AIP expense, it could allow recovery of AIP expense up to a 102.9% effective performance percentage, thus disallowing the difference between 124.35% (the effective performance percentage that actually determined ComEd's 2013 AIP expense) and 102.9%.

A. The Commission's Order Correctly Finds That ComEd's 2013 AIP Expense Was "Impacted By" Earnings Per Share of ComEd's Corporate Affiliate, Thus Requiring a Disallowance of All Such Expense.

The Commission's Order, after reviewing the operation of ComEd's Annual Incentive Plan ("AIP") and its Shareholder Protection Feature ("SPF"), which the Order also calls the "EPS limiter," finds at 49 that "there is no question that the EPS limiter is based on net income or an affiliate's earnings per share" (internal quotations omitted). The Commission's Order also finds on page 50 that "the amount ComEd is seeking to recover for its 2013 incentive compensation expense is impacted by Exelon's EPS." Given these findings, applicable caselaw counsels in favor of finding that the 2013 AIP expense amount ComEd seeks to recover is not just *impacted by* but also *based on* Exelon's EPS. ComEd sought to recover the incentive compensation expense that it actually incurred *after* application of the EPS limiter, as ComEd witness Brinkman admitted. Tr. at 150:11-151:7.

[14] Order, Docket No. 14-0312, December 12, 2014, at 49-51.

[15] Staff Ex. 8.0 at 16, 33.

As the People showed in their Initial Brief at 31-32 and in their Reply Brief on Exceptions at 5, the Seventh Circuit Court of Appeals case of *U.S. v. Ray*, 598 F.3d 407, 409 (7th Cir. 2010), established that where an agreement "clearly reflects an intent to tie" an outcome[16] to an input factor[17], such that if the input factor were "adjusted," the outcome would be "similarly adjusted," then the outcome pursuant to the agreement "may be said to be 'based on' " the input factor. Under the *Ray* rule, if Exelon's 2013 AIP documents[18] showed that actual ComEd AIP expense would be impacted or affected by Exelon EPS, then AIP expense "may be said to be based" on Exelon EPS. Additionally, the Illinois Appellate Court case of *Manuel v. Red Hill Community Unit School Dist. No. 10 Bd. Of Educ.*, 324 Ill.App.3d 279, 284 (5th Dist. 2001), cited by the People at page 33 of their Initial Brief and pages 5-6 of their Reply Brief on Exceptions, equated the term "based on" with "derived from" for purposes of statutory interpretation. The Commission's finding that actual AIP expense was "impacted by" the calculated amount of Exelon's non-GAAP EPS reflects the fact that the AIP expense was "derived from" the calculated amount of Exelon's EPS.

The Commission's findings recognize that ComEd's 2013 AIP expense was based on its corporate parent's earnings per share. Thus, in light of this finding and the express terms of the AIP, the Commission is bound to enforce Section 16-108.5(c)(4)(A) by making ComEd's 2013 AIP expense non-recoverable. As Commissioner del Valle stated at the December 10, 2014 Commission bench session, the Commission should not "go[] out of its way"[19] to bring ComEd's AIP into compliance with the law. The Commission only has those powers given to it by the

[16] In *Ray*, the outcome in question was a federal criminal sentence.

[17] In *Ray*, the input factor was the federal Sentencing Guidelines.

[18] AG Ex. 1.7 (2013 Exelon AIP guide); ComEd Ex. 2.01 (2013 ComEd AIP guide); AG Ex. 3.6 (Exelon AIP formal governing document).

[19] Tr. of December 10, 2014 Commission Bench Session (Public Utility) at 17:2-3.

General Assembly through the Act. *Business and Prof'l People for the Pub. Interest et al. v. Ill. Comm. Comm'n*, 136 Ill.2d 192, 201 (1989) ("*BPI I*"). Where the language of the statute is clear and unambiguous, the law must be applied as written, without resort to other tools of statutory construction. *Mid Electrical Contractors, Inc. v. Abrams*, 228 Ill.2d 281, 287-88 (2008). Thus, the Commission's decision on this issue is not supported by substantial evidence, is contrary to law, and violates Section 16-108.5(c)(4)(A) of the PUA and is subject to judicial review and reversal under Section 10-201(e)(iv)(A), (B) and (C) of the Act.

B. The Commission's Order Purports to Eliminate Or Separate the Effect of the EPS Limiter, But Its Solution Is Not Based On Substantial Evidence in the Record.

The Commission's Order states on page 49 that it seeks to "separate the effect of the EPS from the AIP compensation" and to "eliminate the EPS limiter" and to "ameliorat[e] the impact of the controversial EPS-based shareholder protection feature on ComEd's 2013 AIP incentive compensation." However, the Order does not identify the portion of 2013 AIP expense or the number of dollars that can be treated as separate from the EPS limiter. As the People observed in their Brief on Exceptions at 5-6, *allowing ComEd to recover 2013 AIP expense as though its effective Company Performance Multiplier in 2013 had been 102.9% would not "separate" or "eliminate" or "ameliorate" the EPS limiter.* The 2013 payout percentage, or Company Performance Multiplier, calculated before application of the EPS limiter in the Shareholder Protection Feature was 140.39%. The EPS limiter reduced the effective payout percentage to 124.35%, and ComEd paid out 2013 AIP pay to its employees on that basis. ComEd Ex. 2.0 at 23:472-475. "Eliminating" or "separating" the EPS limiter would mean allowing recovery based

on an effective 140.39% Company Performance Multiplier[20] – the amount that was actually based on KPI employee achievements. The 102.9% recovery level approved by the Commission was "arbitrary" and supported by the facts of a previous ComEd formula rate case rather than the facts of this case, as Commissioner del Valle stated[21] at the Commission's bench session on December 10, 2014. The Commission's Order does not show how a 102.9% recovery level isolates dollars of expense that were impacted by the limiter versus dollars of expense that were not impacted by the limiter. In fact, the record shows that *all* dollars of AIP expense were potentially "at risk" to be reduced to zero based on Exelon EPS performance. Tr. at 145:5-9 (Brinkman).

Additionally, the Order's findings on page 51 that the EPS limiter potentially creates a "disincentive for employees to produce the maximum available benefits for ratepayers" is well-grounded in the record and reflects the concerns found in Section 16-108.5(c)(4)(A) quoted above on page 9. Yet, the Order's finding on the same page that the 102.9% alternative recovery level would "ameliorat[e] the potentially mixed incentives inherent in ComEd's current AIP" is not based on substantial evidence in the record of this proceeding. A *further* downward adjustment from the 140.39% payout that employees actually earned in 2013 through KPI achievement would further *exacerbate* the disincentive posed by the SPF.

Commission orders will be affirmed if they are supported by "substantial evidence." 220 ILCS 5/10-201(e)(iv)(A). The Supreme Court has held that the Commission's factual findings will be upheld unless they are against the manifest weight of the evidence, beyond the

[20] However, such recovery at a 140.39% performance payout percentage would be in no way legally permissible, because ComEd did not pay out that amount; it paid out a lesser amount based on the 124.35% effective Company Performance Multiplier. ComEd could not be granted recovery of more expense than it actually incurred.

[21] Tr. of December 10, 2014 Commission Bench Session (Public Utility) at 17:4-7.

Commission's statutory authority, or violative of constitutional rights. *People ex rel. Hartigan v. Ill. Comm. Comm'n*, 148 Ill.2d 348, 367 (1992). Under applicable precedents defining "manifest weight," the Commission's finding that a 102.9% recovery level would "eliminate" or "separate" the EPS limiter was against the manifest weight of the evidence, because "an opposite conclusion is clearly evident from the record," *Blunier v. Bd. of Fire and Police Comm'rs*, 190 Ill. App. 3d 92, 101 (3d Dist. 1989) and because "there is a complete absence of facts in the record supporting the conclusion reached." *Ross v. Civil Service Comm'n*, 250 Ill. App. 3d 597, 601 (1st Dist. 1993). Thus, the Commission's finding that allowing recovery at the 102.9% alternative level would "eliminate" or "separate" the limiter is not supported by substantial evidence based on the entire evidentiary record presented to the Commission and is subject to judicial review and reversal under Section 10-201(e)(iv)(A) of the Public Utilities Act.

C. The Commission's Order Introduces Standards for Incentive Compensation Expense Recovery That Are Not Authorized by EIMA.

In declining to adopt the AG/Staff proposed disallowance of all 2013 AIP expense, the Commission's Order states on page 49 that the proposed complete disallowance is "disproportionate." This justification for allowing some positive level of AIP expense recovery is not a standard authorized by EIMA, however. As the People stated in their Brief on Exceptions at 8-9, Section 16-108.5(c)(4)(A) of EIMA does not contain language specifying that a disallowance based on violation of the statute must be "proportionate"; rather, that provision simply states that incentive compensation expense based on an affiliate's EPS *is not recoverable*. Additionally, even if "proportionality" were a statutorily authorized standard, the Commission's Order does not attempt to quantitatively or otherwise define what factor or metric a disallowance should be "proportionate" to.

The Commission's Order at 49-50 justifies the alternative 102.9% recovery level by stating that such level is slightly above "market-level compensation" or "market-based salary." However, as the People stated in their Brief on Exceptions at 7-8, Section 16-108.5(c)(4)(A) of EIMA does not allow recovery of incentive compensation that is based on an affiliate's EPS, and it allows no exception for recovery of "market based" incentive compensation that violates the affiliate EPS prohibition. Considerations of market-level compensation cannot negate or eliminate the violation of the statute caused by ComEd's reliance on Exelon's EPS in determining its employees' incentive compensation.

The Act specifically states that incentive compensation "based on net income or an affiliate's earnings per share shall not be recoverable under the performance-based formula rate." 220 ILCS 5/16-108.5(c)(4)(A). At the same time, the Act authorizes the Commission to apply this section "subject to a determination of reasonableness and prudence consistent with Commission practice and law." *Id*. at 16-108.5(c)(4). The Commission has disallowed incentive compensation expense based on financial metrics such as EPS many times[22] in the past and never made a practice of allowing such expense if it was "market based," or of curtailing its disallowance for reasons of "proportion[ality]." By introducing standards for assessing the

[22] *See*, *e.g.*, Order, Docket No. 01-0423, March 28, 2003, at 121 (ComEd); Order, Docket No. 04-0779, Sep. 20, 2005, at 44-46 (Nicor Gas); Order, Docket No. 05-0597, July 26, 2006, at 95-97 (ComEd); Order, Docket Nos. 06-0070/06-0071/06-0072 (cons.), Nov. 21, 2006, at 72 ("all three funding measures rely on earnings per share ("EPS") targets and therefore all operational goals are dependent upon meeting the EPS target first. The Commission agrees that the evidence shows that the ICP of Ameren does not satisfy the requirements to have even a portion of the plan's costs included in operating expenses.") (Ameren Illinois); Order, Docket No. 07-0507, July 30, 2008, at 25-27 ("the Commission finds that for ratemaking purposes 100% of the costs of IAWC's AIP will be disallowed from the operating expenses . . . the Commission is not convinced that recovery of 60% of AIP expenses arguably related to operational and individual goals is warranted since the payment of such AIP still depends upon attainment of financial goals") (Illinois-American Water Company); Order, Docket No. 07-0566, Sep. 10, 2008, at 61 (ComEd); Order, Docket No. 07-0585, Sep. 24, 2008, at 106-108 (Ameren Illinois); Order, Docket No. 08-0363, Mar. 25, 2009, at 28 (Nicor Gas); Order, Docket Nos. 09-0166/0167 (cons.), Jan. 21, 2010, at 58-59 (North Shore Gas/Peoples Gas); Order, Docket Nos. 11-0281/0282 (cons.), Jan. 10, 2012, at 57, 58-59 (North Shore Gas/Peoples Gas); Order, Docket Nos. 12-0511/0512 (cons.), Jun. 18, 2013, at 130 (North Shore Gas/Peoples Gas).

recoverability of incentive compensation expense that are neither consistent with Commission practice and law nor contained in Section 16-108.5(c)(4)(A) of EIMA, the Commission's Order violates state law and is beyond the Commission's jurisdiction, and subject to review and reversal under Sections 10-201(e)(iv)(B) & (C) of the Act.

In support of this request for rehearing, the People incorporate by reference the arguments they presented at pages 10-41 of their Initial Brief; pages 3-19 of their Reply Brief; pages 2-9 of their Brief on Exceptions; and pages 1-6 of their Reply Brief on Exceptions. In light of the arguments above, the People request that the Commission grant rehearing on this matter.

IV. The Motion for Partial Collection of Revenues Subject to Refund

Contemporaneously with this Application for Rehearing, the People are also filing a Motion for Partial Collection of Revenues Subject to Refund relating to the incremental contribution to ComEd's 2015 net revenue requirement effected by (i) the Commission's decision to reject the AG/CCI proposed treatment of the reconciliation balance interest calculation and (ii) the Commission's decision to adopt the alternative 102.9% AIP incentive compensation recovery level instead of the AG/Staff proposal for complete disallowance of AIP expense. That Motion is attached as **Appendix A** to this Application for Rehearing. The Motion asks that the Commission order ComEd to collect and earmark certain identifiable portions of 2015 rates as refundable dating from January 1, 2015 for the potential event that (i) the Commission deny the People's Application for Rehearing as to any one (or both) of the two disputed issues and then (ii) the Appellate Court reverses the Commission's decision as to the issue(s).

V. Conclusion

WHEREFORE, the People of the State of Illinois request that the Commission revisit the issues discussed above, grant rehearing, and modify its Order of December 10, 2014 in accordance with the arguments presented above.

Respectfully submitted,

The People of the State of Illinois
by LISA MADIGAN, Attorney General

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January 8, 2015